

**FILED**

September 12, 2019

**OFFICE OF  
APPELLATE COURTS**

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against BARRY L. BLOMQUIST, JR.,  
a Minnesota Attorney,  
Registration No. 012090X.  
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**AMENDED PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility (Director) files this amended petition pursuant to Rules 10(d) and (e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney (respondent) was admitted to practice law in Minnesota on October 24, 1980. Respondent previously practiced law in Paynesville, Minnesota. Respondent was suspended on January 1, 2009, for nonpayment of lawyer registration fees.

Respondent has committed the following unprofessional conduct warranting public discipline:

**DISCIPLINARY HISTORY**

In considering whether public discipline is warranted it is appropriate, pursuant to Rule 19(b)(4), RLPR, to consider respondent's prior discipline. Respondent's history of prior discipline, including admonitions, is as follows: In May 2012, respondent received an admonition for violations of Rules 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC), when he falsely notarized a mortgage deed conveying

property from the seller to Misty Meadows, an entity respondent co-owned with two others.

### FIRST COUNT

#### Breach of Fiduciary Duty as Trustee, Conduct Prejudicial to the Administration of Justice, Failure to Obey Court Orders, and Conversion of Trust Assets

1. R.N. executed a will in May 2003 creating a trust for the benefit of his daughter, D.H. D.H. was also named as beneficiary under the R.N. Irrevocable Life Insurance Trust under an agreement signed November 15, 1984. Respondent was named trustee in the will and acted as trustee of the life insurance trust.

2. R.N. passed away on October 2, 2003. Respondent was appointed personal representative of R.N.'s estate and the residuary estate was distributed to respondent as trustee named in the will. As the trustee of the insurance trust, respondent also received proceeds of the insurance and/or death benefits in his capacity as trustee. As part of settling the estate, the assets of both trusts were merged. At its start, after sale of some real estate, R.N.'s estate was valued at approximately \$2,000,000, which was divided between D.H. and her two brothers, who had separate trusts established.

3. Pursuant to both the testamentary trust and the insurance trust (together, the trust) and pursuant to the will, D.H. became entitled to receive a distribution from the trust in stated intervals as follows: one third (1/3) of the principal on her birthday in 2006, one half (1/2) value of the trust on her birthday in 2010, and the remainder on her birthday in 2013.

4. In 2006, as trustee, respondent distributed approximately \$100,000 to D.H., which was less than one-third of the principal in her trust. D.H. requested the additional distribution to which she was entitled, but respondent failed to provide D.H. the requested amount.

5. In 2007, when the probate of the R.N. estate was completed, D.H. received an estate summary consisting of a plan of distribution of the remaining estate and an inventory of the probate and non-probate assets, including a description of what the assets were and how D.H.'s share was allocated to the trust for her benefit. After 2007, however, respondent failed to provide D.H. with an annual report or other accounting information relating to respondent's activities as the trustee until 2011, as described below.

6. In 2010, D.H. was entitled to another distribution from the trust, and in March 2011 she received a distribution from an account with a brokerage firm. Again, D.H. believed the amount distributed was less than the amount to which she was entitled and requested respondent to provide her the full amount.

7. In 2011, respondent furnished D.H. with a Trustee Summary Report (2010 Summary Report) dated December 31, 2010. This was the first time since 2007, when the probate was completed, that respondent provided D.H. with any accounting or information relating to respondent's activities as the trustee.

8. The 2010 Summary Report indicated that \$150,479.22 of the trust assets were placed in an Edward Jones account and that \$313,000 was "invested" in five companies: (1) Wind2Water Technology Inc.; (2) VolcanAire LLC; (3) VolcanWall Panel Systems Inc.; (4) Air2Light LLC; and (5) Green Century Synergies LLC. This was the first time D.H. was made aware that respondent invested the trust assets in these companies.

9. Upon further investigation, D.H. discovered that the five companies were of recent creation, with no public trading or market for their securities. Further, it appeared respondent had a personal interest in the five companies. Concerned, D.H. requested respondent to provide financial information about the companies. Respondent failed to provide such information to D.H.

10. In April 2011, D.H. petitioned the Probate/Mental Health Court in Hennepin County for an order requiring trustee to account, subjecting trust to court supervision, and granting other relief under court file no. 27-TR-CV-11-62.

11. The Honorable Judge Jay Quam was assigned to the matter and on May 6, 2011, Judge Quam ordered respondent to appear at a hearing scheduled for June 8, 2011. Respondent failed to appear for the June 8, 2011, hearing.

12. On June 14, 2011, Judge Quam issued an order requiring respondent to appear on July 11, 2011, to show cause why respondent was not present at the June 8, 2011, hearing, and why he failed to provide the documentation requested by D.H. regarding the investments of the trust.

13. The order to show cause ordered respondent to bring with him true and correct copies of the following records with respect to Wind2Water Technology Inc.; VolcanAire LLC; VolcanWall Panel Systems Inc.; Air2Light LLC; Green Century Synergies LLC; Green Century Solutions LLC; Global Lighting Systems LLC; and all other affiliated or related businesses (as quoted from the order):

- a. Financial statements, including balance sheets and income/expense reports, monthly bank account statements and federal and state income tax returns, all for the most recent three years;
- b. Addresses of main business and production locations;
- c. List of ownership interests with respective amounts invested;
- d. Names of other persons having stock purchase or other investment rights or options including copies of issued stock certificates and as to the LLCs;
- e. Company records of unit names and addresses of officers, directors and manager; and

- f. Names of two highest-compensated persons and respective amounts paid during the calendar years beginning in 2009 to the present time.

14. The order to show cause also ordered respondent to bring with him true and correct copies of fiduciary income tax returns filed for the R.N. trusts for all the years since its inception and the Form 706 Estate Tax Return.

15. The order to show cause warned respondent that if he does not appear on July 11, 2011, with all the information delineated in the Order, the court may enter a warrant for respondent's arrest and/or take other appropriate action.

16. On July 11, 2011, respondent appeared before Judge Quam. Respondent brought with him documents, but he did not bring with him all documents and information ordered by the court.

17. During the hearing, the court took testimony from respondent regarding the trust assets. Based on the evidence and testimony at the July 11, 2011, hearing, Judge Quam issued an order on July 25, 2011, removing respondent as trustee. Judge Quam also made the following findings (as quoted from the order, citations to order paragraphs noted):

- a. [Respondent] testified at the hearing as to the investments he has made of Trust assets. Though the figures are far from precise, it appears that out of a total of approximately \$2,000,000 of funds in the Trust at its inception (after the sale of certain real estate), [respondent] invested approximately \$1,100,000 in certain companies, all of which [respondent] is a co-owner in. \$750,000 has allegedly been distributed to the beneficiaries,<sup>1</sup> and approximately \$30,000 remains in the Trust. (Order, ¶ 3.)

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<sup>1</sup> While not mentioned on the order, this amount likely included distributions to D.H.'s brothers, the other two beneficiaries of the estate.

- b. [Respondent] provided a list of companies in which he has invested Trust assets, namely, Green Century Solutions, LLC; Green Century Synergies, LLC; VolcanWall Panel Systems, Inc.; Wind2Water, LLC; Wind2Water Technology, LLC; Global Lighting Systems; and Air2Light; LLC. [Respondent] explained that each of these companies' products and development centered on green technologies and up-and-coming global solutions. (Order, ¶ 4.)
- c. [Respondent] admitted that there had been no revenue for any of the companies, but argued that he was engaged in a bid for a multi-million dollar contract from foreign governments. When the Court questioned [respondent] about whether he discussed the proposed investments prior to making such investments, [respondent] was vague in his response, and admitted that he had never consulted with [D.H.]. (Order, ¶ 5.)
- d. What is especially troubling to the Court is the cavalier attitude [respondent] seems to have about the obvious self-dealing he engaged in by using trust funds to fund his own businesses. It seems that [respondent] believes that since he sees his business ventures as promising significant returns upon (what he believes is) their inevitable success, he has satisfied his fiduciary duties to the Trust and to [D.H.]. Unfortunately, nothing could be further from the truth in the eyes of the law, leaving this Court to the immediate action to protect what is left in the Trust while the investigations into [respondent]'s actions take place. (Order, ¶ 6.)
- e. Accordingly, as it appears now, the Court believes that [respondent]'s choice of investments is not in compliance with the prudent investor rule contained in Minn. Stat. § 501B.151 or the

prohibition against self-dealing. The prudent investor rule requires that [respondent] (a) exercise reasonable care, skill, and caution in making the investments, (b) diversify the investments of the trust, and (c) consider general economic conditions, and the role that each investment or course of action plays within the overall trust portfolio, needs for liquidity, regularity of income, and preservation or appreciation of capital. (Order, ¶ 7.)

- f. In this case, it appears that [respondent] invested a substantial portion of the Trust assets in companies that he was personally involved in, and based his decisions on the potential benefit to his own companies, rather than on the factors outlined above with regards to the Trust. The investments are not diversified, but are instead all centered on the similar concepts and start-up businesses. Finally, taking into consideration the current economic climate, the trust portfolio, and the lack of liquidity in all of the investments, the investments made by [respondent] are unreasonable and imprudent. (Order, ¶ 8.)
- g. Additionally, there is strong evidence that [respondent's] actions dealt with trust property in a manner that benefited himself, in violation of the statutory prohibition against self-dealing set forth in Minn. Stat. §501B.14 and related caselaw. It is well established that a trustee cannot purchase or deal in the trust property for his own benefit or on his own behalf, either directly or indirectly. See *St. Paul Trust Co. v. Strong*, 85 Minn. 1, 88 N.W. 256; *Smith v. Tolversen*, 190 Minn. 410, 252 N.W. 423, 425. The burden of proving that his actions conformed to the standard of his duty falls upon the trustee and not upon the beneficiaries. *Id.* at 425; *Malcolmson v.*

*Goodhue County Nat. Bank of Red Wing*, 198 Minn. 562, 272 N.W. 157, 160. It appears that [respondent] ignored these directives, leading the Court to remove him as trustee. (Order, ¶ 9.)

- h. In the case at hand, the [respondent] does not dispute that he invested in companies in which he had an interest. Although he stated that he has only received income from one of the companies in which he invested Trust assets, his partial ownership in the other businesses make it clear that he stands to benefit from his investment of the Trust assets. Finally, [respondent] did not provide any information to support his argument that his actions conformed to the standard of duty for a trustee, and hence did not carry his burden. (Order, ¶ 10.)

18. Based on the above findings, the court removed respondent as trustee of the trust to protect the assets while D.H. continued to conduct further investigation into what happened to the trust assets.

19. Despite Judge Quam's June 14, 2011, order specifying all the documents respondent was required to produce, respondent failed to produce all the required financial information and documents that would allow D.H. to verify the legitimacy of the "investments." The documents respondent did produce at the hearing were incomplete and did not fully comply with the court's order to show cause.

20. Based on respondent's testimony and despite the incomplete documents provided, D.H. was able to determine that the "investments" respondent made in these related companies were made during the period of 2009 and 2010. The "investments" were made in the form of payments made with trust assets to the companies in exchange for promissory notes that respondent signed in his executive capacity on behalf of the various companies. All the notes were due and payable on September 1, 2012.



21. Based on the available information, D.H. filed a motion to render judgment against respondent as trustee and in his individual capacity.

22. By order dated March 9, 2012, Judge Quam granted summary judgment in favor of D.H. on the issue of respondent's breach of fiduciary duty. Judge Quam made findings based on submissions from both parties. Judge Quam made the following findings of undisputed facts to support summary judgment:

- a. Respondent invested \$313,000 in five companies—Wind2Water Technology Inc.; VolcanAire LLC; VolcanWall Panel Systems Inc.; Air2Light LLC; and Green Century Synergies LLC. The total of these investments accounts for almost all of the amounts placed in the trust for D.H. as of February 28, 2007.
- b. Respondent admitted he is a principal owner or investor in each of the listed companies.
- c. All the companies are start-up companies that were not generating revenue and none of the companies had actual clients or active methods of revenue.
- d. While respondent claims that each of the companies has the potential to bring in billions of dollars, it does not appear that any have seen a fraction of that in actual income.
- e. No material facts are in dispute as respondent admits he invested the funds in companies in which respondent owns a partial or complete interest and there is no dispute that those companies are not generating revenue and have not done so since the funds from the trust were invested in them.
- f. Respondent owed a fiduciary duty to D.H. as the trustee of the trust of which D.H. is a beneficiary.

- g. Respondent breached his fiduciary duties as a matter of law by investing a substantial amount of the funds from the R.N. trust into companies in which respondent had a substantial interest.
- h. Respondent provided no facts upon which the Court could conclude respondent's actions were appropriate, justified, or in any way excusable or defensible, despite being given ample opportunity to do so.
- i. Respondent took money that did not belong to him and invested it in businesses in which he had a strong personal interest.
- j. The remedy for respondent's breach is the amount agreed to by counsel as the amount D.H. would have been entitled to under the trust had respondent not breached his duty of loyalty, which is \$400,000.

23. The court entered judgment in the amount of \$400,000 against respondent for his breach of fiduciary duty as trustee of the trust. Respondent did not appeal this judgment.

24. On March 28, 2012, D.H. docketed the judgment and opened court file no. 27-CV-12-8045.

25. Respondent still failed to produce all the information requested regarding the trust assets and the "investments" made with trust assets. D.H. had to continue to make attempts to obtain information about the trust assets from respondent through post-judgment discovery. Unable to obtain the necessary financial information from respondent to track where the trust assets went, D.H. sought recourse from the court.

26. On November 6, 2012, the Honorable Judge Dennis Murphy issued an order requiring respondent to appear on November 29, 2012, to answer questions concerning his personal property and transactions related to the trust property.

27. The November 29, 2012, hearing was continued to February 28, 2013, to allow additional time for the parties to review the documentation provided as well as allow respondent time to obtain additional documentation.

28. The February 28, 2013, proceeding was rescheduled a number of times to March 12, 2013, due to respondent's claimed illness. By the March 12, 2013, rescheduled date, however, respondent was apparently still ill and the hearing was canceled.

29. On April 10, 2013, D.H.'s attorney sent an email to respondent to schedule a new hearing date. After receiving no response, on April 18, 2013, D.H.'s attorney followed up with a telephone call to respondent. On April 19, 2013, respondent responded via email indicating that he would have an update and documents available for D.H.'s attorney that day.

30. Respondent did not provide D.H. the information as promised and by correspondence dated April 30, 2013, D.H.'s attorney gave respondent seven days to comply with the order to produce documents for D.H.'s examination. Respondent was warned if he continued to fail to fully comply, D.H. would bring a motion to show cause. Respondent failed to respond.

31. On June 28, 2013, D.H. filed a notice of motion and motion to show cause.

32. On June 28, 2013, respondent filed an affidavit in opposition of the motion. Respondent claimed that he provided an update to D.H. on February 8, 2013; that he told D.H.'s attorney on April 18, 2013, that he would provide an update but "these third party negotiations were very confidential and that we were only able to see what was going on, several days to weeks after they had occurred, as we were third party beneficiaries of the deal"; that on June 12, 2013, respondent indicated to D.H.'s attorney that he would attend a hearing on the first Thursday after July 4, 2013, or the next Thursday thereafter.

33. The matter was assigned to the Honorable Judge Thomas Sipkins. On July 2, 2013, Judge Sipkins held a hearing on D.H.'s motion to show cause. At the hearing, respondent testified as to the investments he made with the trust assets. Respondent testified that the assets were allegedly invested in three companies: (1) approximately \$110,000 was invested in a company called VolcanAire, LLC; (2) approximately \$120,000 was invested in a company called VolcanWall Panel Systems, Inc. or VolcanWall Panel Leasing LLC; and (3) approximately \$100,000 was invested in a company called Wind2Water Technology, LLC. Respondent could not account for the other trust assets. While this testimony is inconsistent with respondent's previous testimony before Judge Quam and inconsistent with the documents provided by respondent during the course of the underlying proceedings, this testimony again showed that respondent "invested" trust assets in companies in which respondent had a substantial personal interest.

34. Respondent also testified that he was co-owner in all three entities in which trust assets were invested. Respondent failed to provide any documentation as to the validity of these companies, and did not have exact figures as to how much he paid to each entity. Respondent testified that he and D.H.'s counsel agreed that the \$400,000 judgment Judge Quam ordered respondent to pay accurately reflected what was owed to D.H.

35. On July 2, 2013, the court issued an order taking under advisement the issue of whether respondent was in civil contempt of court. The order required respondent to surrender his passport by July 8, 2013. The order indicated failure to do so may result in a finding of constructive civil contempt.

36. The July 2, 2013, order also indicated that a subsequent order would follow outlining conditions that respondent must meet within thirty days of that order. Failure to comply with the conditions may result in a finding of constructive civil contempt.

37. On July 10, 2013, Judge Sipkins issued the subsequent order which required respondent to provide the following with the court (as quoted from the order):

- a. all records of accounts and check registers, at banks and other financial institutions, in which he has written checks or made withdrawals or deposits from January 1, 2009 to the present;
- b. identify each entity in which Trust assets were invested, and identify all officers, shareholders, partners, registered agents, and the entity's registered address, from the time of the entities formation to the present;
- c. identify the exact amounts invested in VolcanAire, LLC, VolcanWall Panel Systems, Inc., VolcanWall Panel Leasing, LLC and Wind2Water Technology, LLC, and any payments or distributions as cash, dividends, or any other form of compensation paid by these entities to [respondent];
- d. identify any other Trust assets over which [respondent] maintains control; and provide all personal income tax returns filed by [respondent].

The court's order indicated that failure to comply with the conditions may result in a finding of constructive civil contempt absent good cause shown.

38. The July 10, 2013, order also established a review hearing for August 20, 2013. As of the date of the hearing, respondent failed to surrender his passport as ordered and failed to provide any of the documentation ordered by the court in the July 10, 2013, order.

39. Respondent did not appear for the review hearing. At the hearing, D.H.'s counsel indicated that respondent provided counsel with a photocopy of his passport and falsely represented to counsel that he submitted his passport to the court after the

July 2, 2013, hearing. The photocopy of the passport incorrectly spelled respondent's name as "Blomguist."

40. As a result, Judge Sipkins ordered that respondent be held in constructive civil contempt based on his failure to comply with the court's July 2, 2013, and July 10, 2013, orders (which required respondent to surrender his passport and provide the court with various documentation related to the trust and trust assets). The contempt order was also based on respondent's failure to appear at the review hearing on August 20, 2014. A bench warrant was issued for respondent's arrest.

41. To avoid arrest, in October 2013, respondent surrendered a box of documents and his passport to the court. The information respondent produced was again incomplete. As a result, D.H. and her attorney were still unable to trace the money respondent took from the trust and "invested" in the various companies in which he admittedly had a personal interest. For example, it is unclear from the documents provided whether funds from the trust went to the companies or other accounts, whether the companies legitimately used the funds or were merely shell companies that just transferred the payments to respondent. D.H. and her attorney were aware of claims that respondent had an off-shore account, possibly in the Cayman Islands, Bermuda or some other location in Latin America, but were unable to substantiate the claims because of respondent's failure to provide such accounting and information as ordered by the court.

42. All the companies in which respondent "invested" D.H.'s trust assets have since dissolved and, upon information and belief, had not generated any income or revenue or made any payments on the promissory notes.

43. Of the \$400,000 judgment, respondent has only paid out approximately \$100,000 to D.H.

44. On March 8, 2018, D.H. filed a complaint with the Director regarding respondent's conduct in handling the trust.

45. On March 21, 2018, the Director issued a notice of investigation directing respondent to respond to D.H.'s complaint.

46. While investigating the matter, the Director determined that the written answers and documents produced by respondent in response to the Director's requests for information were insufficient. Respondent failed to fully respond to the Director's request for information and documents, which was reminiscent of and consistent with his conduct in the underlying trust litigation as described above. Respondent's answers were evasive and not responsive. As a result, the Director wished to meet with respondent to obtain direct answers to the Director's outstanding questions.

47. On February 26, 2019, the Director called respondent and left a message with respondent asking for meeting. Respondent failed to return the Director's call. On March 6, 2019, the Director called respondent again and left a message requesting a meeting. Respondent failed to respond. On that same day, the Director sent respondent correspondence asking respondent to contact the Director to schedule a meeting. Respondent failed to respond.

48. On March 15, 2019, the Director sent another correspondence, this time reminding respondent that his cooperation is required under Rule 8.1(b), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR. The letter specifically asked respondent to review his calendar and have ready dates in March that respondent was available to meet. The correspondence informed respondent that if the Director does not hear from respondent within 10 days of the letter, the Director will proceed with the case without benefit of meeting with respondent.

49. In correspondence received on March 27, 2019, respondent indicated that much of the information the Director has asked for is no longer available. Instead of providing his available dates as the Director specifically requested, respondent asked the Director to send questions to him for his response.

50. In response, by correspondence dated April 2, 2019, the Director informed respondent that the Director wished to meet with respondent to address any remaining issues. The Director stated, "Throughout this case, this Office has sent correspondence to you with questions. At this time, we believe it would be more beneficial and efficient for us to meet in person to address the remaining issues." As respondent failed to provide dates on which he would be available to meet, the Director took the liberty of selecting a date and time for a meeting. The Director scheduled the meeting for April 16, 2019.

51. On April 16, 2019, respondent failed to appear at the meeting. Instead, by facsimile dated April 16, 2019, respondent indicated he was unable to make the meeting and again offered to only answer questions posed in writing by letter, which the Director has already indicated to respondent was insufficient.

52. On June 24, 2019, the Director served charges of unprofessional conduct on respondent ("charges"). Pursuant to Rule 9(a)(1), RLPR, respondent's answer to the charges was due to the Director and Panel Chair by July 11, 2019 (inclusive of three days for mailing). Respondent did not provide an answer or otherwise communicate with the Director regarding the charges.

53. Respondent's conduct in failing to: (1) comply with Judge Quam's May 6, 2011, order; and (2) comply with Judge Sipkins' July 2, 2013, and July 10, 2013, orders leading to an order finding respondent in contempt of court violated Rules 3.4(c) and 8.4(d), MRPC.

54. Respondent's conduct in breaching his fiduciary duty as a trustee by violating Minn. Stat. § 501B.14, which prohibits a trustee from engaging in self-dealing transactions, violated Rule 8.4(d), MRPC.

55. Respondent's inherently dishonest conduct of converting D.H.'s trust assets for his personal use as evidenced by his investing D.H.'s trust assets in companies in which he had a personal interest, failing to account for the funds invested

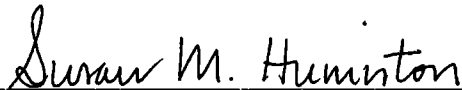


in those companies, failing to demonstrate that the companies were legitimate and viable companies despite numerous requests from the court, D.H. and the Director, violated Rule 8.4(c), MRPC.

56. Respondent's conduct in failing to fully cooperate with the Director's investigation and respond to the charges violated Rule 25, RLPR, and Rule 8.1(b), MRPC.

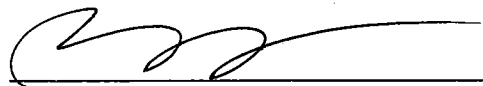
WHEREFORE, the Director respectfully prays for an order of this Court disbarring or suspending respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: August 16, 2019.




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This amended petition is approved for filing pursuant to Rules 10(d) and (e) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: August 20, 2019.   
SUSAN C. RHODE  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD